

October 25, 2019

VIA ECF

Hon. Alan S. Trust
 U.S. Bankruptcy Judge
 U.S. Bankruptcy Court
 Eastern District of New York
 Alfonse M. D'Amato Federal Courthouse
 290 Federal Plaza
 Central Islip, New York 11722

George Angelich

Partner
 212.457.5423 DIRECT
 212.484.3990 FAX
 george.angelich@arentfox.com

**Re: *In re: Absolut Facilities Management, LLC, et al.*, No. 19-76260 (AST)
 (Jointly Administered)**

Dear Judge Trust:

We represent Arba Group and its affiliates (collectively, the “Landlords”¹) for the six skilled nursing facilities and one assisted living facility (collectively, the “Senior Care Facilities”) operated by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”).

We write in furtherance of the Debtors’ *Stipulation and Order Regarding Briefing Deadlines for November 4, 2019 Hearing* [Docket No. 199] (the “Stipulation”), which was entered this afternoon, and the Debtors’ letter to the Court dated October 23, 2019 [Docket No. 193] (the “Debtors’ Status Update”), to provide the Court with an update regarding settlement discussions between the Landlords and Debtors, and to request the Court’s attention to certain critical, time-sensitive scheduling matters in these cases. In short, while settlement discussions are continuing, they have yet to result in a finalized term sheet and the November 4, 2019 hearing is imminent. The Landlords respectfully submit a telephonic status conference will be necessary to discuss scheduling matters on Tuesday if a settlement is not reached in order for the parties and the Court to plan and schedule next steps. For these reasons, as further explained below, the Landlords respectfully request that the Court schedule a telephonic conference for Tuesday, October 29, 2019.

After exchanging several draft term sheets over the past three weeks, counsel for the Landlords and Debtors held a call yesterday to discuss several significant outstanding issues. The parties

¹ The Landlords are 292 Main Street, LLC; 6060 Armor Road, LLC; 2178 N. Fifth Street, LLC; 101 Creekside Drive, LLC; 4540 Lincoln Drive, LLC; and 26 Cass Street, LLC.

have yet to reach an agreement on certain of these issues. While settlement discussions are ongoing and the parties continue to work towards finalizing an acceptable term sheet, time is of the essence as the November 4, 2019 hearing is one week away.

Scheduled to be heard on November 4, 2019 are, among other things, the Debtors' closure motion [Docket No. 51] and lease rejection motion [Docket No. 85] for the Orchard Park Facility as well as the final hearing on the Debtors' debtor-in-possession financing motion [Docket No. 4]. Absent a settlement, those matters will be contested. In addition, the Landlords' motion to appoint a chapter 11 trustee [Docket No. 69] (the "Trustee Motion") is scheduled only as a status conference for that day.

Prior to the October 3, 2019 hearing where the parties announced settlement discussions, the Landlords agreed to pause litigation and discovery with the expectation that a term sheet would be finalized and filed by October 8, 2019 as directed by the Court. Due to the delays stemming from the unexpected closure of the Orchard Park Facility and the Debtors' surrender of their CMS Form 855A, however, the term sheet remains pending and the Landlords have no choice but to prepare to move forward with all contested matters. In fact, this is the exact scenario the Landlords were concerned about and previewed for the Court in the Landlords' status report filed on October 15, 2019 [Docket No. 150].

Recognizing the potential for the need to prepare for a contested hearing on November 4, 2019 (and a subsequent hearing on the Trustee Motion), on October 16, 2019 the Landlords served additional document requests on the Debtors and noticed additional depositions. *See* [Docket Nos. 174, 175, 176, 177]. The Landlords previously served the Debtors with initial document requests on September 26, 2019. While the parties are continuing to confer regarding discovery, to date, the Debtors have not provided responses to the Landlords' document requests, nor have the Debtors and Landlords been able to agree on dates for the more recent deposition notices.

As of the filing of this letter, discussions are continuing regarding settlement, a consensual adjournment of the November 4, 2019 hearing,² and discovery. If all of these matters are not resolved by the end of the day Monday, October 28, 2019, the Landlords believe a status conference with the Court will be necessary. It will also be necessary to discuss scheduling a hearing on the Landlords' Trustee Motion. Thus, the Landlords respectfully request that the Court schedule a telephonic status conference to discuss these scheduling issues on Tuesday, October 29, 2019. In the meantime, the Landlords intend to further confer with the Debtors regarding these scheduling matters and to continue to discuss settlement. On Tuesday, the Landlords and Debtors will be in a position to provide the Court with an update on all matters.

² The Debtors, Landlords, U.S. Trustee, and Capital Finance, LLC are currently discussing a consensual adjournment of all matters scheduled for November 4, 2019 to on or about November 12, 2019.

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As reflected in the Stipulation, the Debtors have agreed to extend the Landlords' objection deadlines for all matters currently scheduled for November 4, 2019 to Monday, October 28, 2019 at 4:00 p.m. Absent a finalized settlement by that time, the Landlords will file a protective objection to meet the deadline with respect to these matters. This filing will also address the events outlined in the Debtors' Status Update related to the closure of the Orchard Park Facility, the surrender of the CMS Form 855A, discussions with the New York State Department of Health, and the final surrender of the operating certificate.

The Landlords are continuing to engage in good-faith discussions regarding scheduling and settlement and are hopeful to have a positive report for the Court on Tuesday should the Court grant the request for a telephonic status conference.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "George Angelich", with several loops and flourishes.

George Angelich